

Adam J. Zapala (SBN 245748)
 Reid Gaa (SBN 330141)
COTCHETT, PITRE & McCARTHY, LLP
 840 Malcolm Road, Suite 200
 Burlingame, CA 94010
 Tel: (650) 697-6000
 Fax: (650) 697-0577
 azapala@cpmlegal.com;
 rgaa@cpmlegal.com

Scott C. Nehrbass (*pro hac vice*)
 Daniel J. Buller (*pro hac vice*)
FOULSTON SIEFKIN LLP
 32 Corporate Woods, Suite 600
 9225 Indian Creek Parkway
 Overland Park, KS 66210-2000
 Tel: (913) 253-2144
 Fax: (866) 347-1472
 snehrbass@foulston.com; dbuller@foulston.com

E. Powell Miller (*pro hac vice*)
 Sharon S. Almonrode (*pro hac vice*)
THE MILLER LAW FIRM, P.C.
 950 W. University Dr., Suite 300
 Rochester, Michigan 48307
 Telephone: (248) 841-2200
 Fax: (248) 652-2852
 epm@millerlawpc.com; ssa@millerlawpc.com

Attorneys for Plaintiffs and the Putative Class [Additional counsel listed on signature page]

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

I.C., a minor, by and through his natural
 parent, NASIM CHAUDHRI, AMY GITRE,
 CAROL JOHNSON, LISA THOMAS,
 JOSEPH MARTINEZ IV, DANIEL PETRO,
 and CHRISTOPHER ROSIAK, individually
 and on behalf of all others similarly situated,

Plaintiffs,

v.

ZYNGA, INC.,

Defendant.

Hassan A. Zavareei (SBN 181547)
 Mark Clifford (*pro hac vice*)
TYCKO & ZAVAREEI LLP
 1828 L Street NW, Suite 1000
 Washington, DC 20036
 Tel: (202) 973-0900
 Fax: (202) 973-0950
 hzavareei@tzlegal.com;
 mclifford@tzlegal.com

Jennie Lee Anderson (SBN 203586)
ANDRUS ANDERSON LLP
 155 Montgomery Street, Suite 900
 San Francisco, CA 94104
 Tel: (415) 986-1400
 Fax: (415) 986-1474
 jennie@andrusanderson.com

Elizabeth A. Fegan (*pro hac vice*)
FEGAN SCOTT LLC
 150 S. Wacker Dr., 24th Floor
 Chicago, IL 60606
 Tel: (312) 741-1019
 Fax: (312) 264-0100
 beth@feganscott.com

Case No. 4:20-cv-01539-YGR

**ADMINISTRATIVE MOTION FOR
 LEAVE TO FILE SURREPLY IN
 OPPOSITION TO DEFENDANT ZYNGA
 INC.'S MOTION TO DISMISS
 CONSOLIDATED CLASS ACTION
 COMPLAINT**

1 Pursuant to Local Rule 7-11, Plaintiffs respectfully request that the Court enter an order
2 granting Plaintiffs leave to file the attached Surreply in Opposition to Defendant Zynga Inc.’s Motion
3 to Dismiss Consolidated Class Action Complaint.

4 Plaintiffs seek to file a Surreply to address one narrow legal issue—the Supreme Court’s
5 *TransUnion LLC v. Ramirez*, No. 20-297, __ S. Ct. __, 2021 U.S. LEXIS 3401 (June 25, 2021)
6 decision, which was issued after the filing of Plaintiffs’ Opposition.

7 The Supreme Court decided *TransUnion* on June 25, 2021, one month after Plaintiffs
8 submitted their Response in Opposition to Defendants’ Motion to Dismiss on May 26, 2021. *See id.*
9 Zynga filed its Reply on June 30, 2021, and had the benefit of raising new legal arguments based on
10 the *TransUnion* case. Indeed, the first sentence of Zynga’s Reply claims that *TransUnion* has made its
11 standing arguments “clearer now than when briefing on this motion began.” (ECF 84, page 9.) And
12 throughout its Reply, Zynga relies heavily on *TransUnion* (misinterpreting the case) to argue that
13 Plaintiffs lack Article III standing. *See id.* at pages 1, 2, and 4.

14 Given the sequencing of the foregoing events, Plaintiffs have had no opportunity to respond to
15 Zynga’s new legal arguments and no opportunity to present their own legal arguments relating to the
16 *TransUnion* case. Because of the timing of the Supreme Court’s opinion, Plaintiffs will be unfairly
17 prejudiced if they are unable to present argument relating to *TransUnion* and respond to Zynga’s
18 erroneous interpretation of the case. Plaintiffs, therefore, respectfully seek leave to file a Surreply that
19 addresses this limited legal issue.

20 This Court’s local rules are structured to “preserv[e] the Court’s ability to render a decision
21 that is fully-informed by any particularly germane legal authority that may emerge,” while deterring
22 an “endless cycle” of filings. *Michael Taylor Designs, Inc. v. Travelers Prop. Cas. Co. of Am.*, 761 F.
23 Supp. 2d 904, 909 (N.D. Cal. 2011). Therefore, courts grant requests for leave to file surreplies that
24 respond to arguments raised for the first time in a reply brief. *See In re Yahoo! Inc. Customer Data*
25 *Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2017 U.S. Dist. LEXIS 140212, at *176 n. 16 (N.D. Cal.
26 Aug. 30, 2017) (granting motion for leave to file surreply and considering the attached surreply in
27 deciding a motion to dismiss). While Plaintiffs disagree with many aspects of Zynga’s Reply brief,
28

1 Plaintiffs are limiting their request for leave to file a Surreply and limiting the content of their
2 Surreply to legal issues relating to *TransUnion*.

3 Plaintiffs attach a copy of their proposed Surreply to this motion. Pursuant to Local Rule 7-11,
4 Plaintiffs also submit a declaration in support of this motion, and a proposed order granting it.
5 Plaintiffs respectfully request that the Court accept for filing the attached Surreply.

6
7 Date: July 16, 2021

Respectfully submitted,

8 By: /s/ Adam J. Zapala

9 Adam J. Zapala (SBN 245748)

Reid Gaa (SBN 330141)

10 **COTCHETT, PITRE & McCARTHY, LLP**

840 Malcolm Road, Suite 200

11 Burlingame, CA 64010

12 Telephone: (650) 697-6000

Facsimile: (650) 697-0577

13 azapala@cmplegal.com

14 rgaa@cmplegal.com

15 Scott C. Nehrbass (*pro hac vice*)

Daniel J. Buller (*pro hac vice*)

16 **FOULSTON SIEFKIN LLP**

32 Corporate Woods, Suite 600

17 9225 Indian Creek Parkway

Overland Park, KS 66210-2000

18 Tel: (913) 253-2144

19 Fax: (866) 347-1472

snehrbass@foulston.com

20 dbuller@foulston.com

21 E. Powell Miller (*pro hac vice*)

Sharon S. Almonrode (*pro hac vice*)

22 William Kalas (*pro hac vice pending*)

23 **THE MILLER LAW FIRM, P.C.**

950 W. University Dr., Suite 300

24 Rochester, Michigan 48307

Telephone: (248) 841-2200

25 Fax: (248) 652-2852

26 epm@millerlawpc.com

ssa@millerlawpc.com

27 *Attorneys for Plaintiffs I.C., Amy Gitre, and the*
28

Proposed Class

Hassan A. Zavareei (State Bar No. 181547)

Mark Clifford (*pro hac vice*)

TYCKO & ZAVAREEI LLP

1828 L Street NW, Suite 1000

Washington, D.C. 20036

Telephone: (202) 973-0900

Facsimile: (202) 973-0950

hzavareei@tzlegal.com

mclifford@tzlelegal.com

Attorneys for Plaintiffs Carol Johnson and Lisa Thomas, and the Proposed Class

Jennie Lee Anderson (SBN 203586)

ANDRUS ANDERSON LLP

155 Montgomery Street, Suite 900

San Francisco, CA 94104

Telephone: (415) 986-1400

Facsimile: (415) 986-1474

jennie@andrusanderson.com

Elizabeth A. Fegan (*pro hac vice*)

FEGAN SCOTT LLC

150 S. Wacker Dr., 24th Floor

Chicago, IL 60606

Telephone: (312) 741-1019

Facsimile: (312) 264-0100

beth@feganscott.com

Lynn A. Ellenberger (*pro hac vice*)

FEGAN SCOTT LLC

500 Grant St., Suite 2900

Pittsburgh, PA 15219

Telephone: (412) 346-4104

Facsimile: (312) 264-0100

lynn@feganscott.com

J. Barton Goplerud (motion for *pro hac vice* forthcoming)

SHINDLER, ANDERSON,

GOPLERUD & WEESE, P.C.,

5015 Grand Ridge Drive, Suite 100

West Des Moines, IA 50265

Telephone: (515) 223-4567

Facsimile: (515) 223-8887

goplerud@sagwlaw.com

*Attorneys for Plaintiffs Joseph Martinez IV, Daniel
Petro, Christopher Rosiak, and the Proposed Class*